

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 21, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FRANCISCO BARRAGAN, JR.,

Petitioner,

v.

MELISSA ANDREWJESKI,

Respondent.

NO: 2:24-CV-0058-TOR

ORDER DISMISSING ACTION

By Order filed April 16, 2024, the Court advised Petitioner, a *pro se* prisoner at the Coyote Ridge Corrections Center, of the deficiencies of his habeas corpus petition and directed him to amend within sixty (60) days. ECF No. 7. The \$5.00 filing fee has been paid for this action.

On April 17, 2024, Petitioner filed a Motion and Memorandum for Appointment of Counsel, ECF No. 8, which consisted of 288 pages and was noted for hearing without oral argument on May 17, 2024. On April 29, 2024, Petitioner filed a third Application to Proceed *in Forma Pauperis*, ECF No. 9, a First Amended

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1 Petition under 28 U.S.C. § 2254 consisting of 353 pages, ECF No. 11, and a second
2 Motion for Appointment of Counsel/Evidentiary Hearing, consisting of seven pages,
3 ECF No 10.

4 The Court finds that Petitioner's submissions do not satisfy the directive to
5 present a short and plain statement showing he is entitled to relief. *See* ECF No. 7
6 at 7. Petitioner's reference to a thirteen page "affidavit," ECF No. 11-1, *see* ECF
7 No. 11 at 1, but provides no relevant information regarding his conviction following
8 a plea of guilty to First Degree Rape of a Child in 2014. *See* ECF No. 7 at 1–2, fn.
9 1.

10 The Court will not search the more than 600 pages of appendices in search of
11 claims not clearly and concisely presented in the First Amended Petition. ECF No.
12 11. Furthermore, the Court will not engage with Petitioner's repeated assertions that
13 RCW 9A.44.020(1) is an unconstitutional Bill of Attainder, *id.* at 5 and 7, ECF No.
14 11-1 at 3–5 and 10, having already determined that this argument lacks any basis in
15 law or fact. *See* ECF No. 7 at 3–6.

16 Petitioner does not present a clear statement of facts demonstrating that his
17 habeas corpus petition was timely filed pursuant to 28 U.S.C. § 2244(d). Rather, he
18 asserts that as an indigent prisoner, "[he] was denied an adequate opportunity to
19 adduce the relevant facts or legal claims, was obstructed by state officials in various
20 ways and subjected to deficient and unconstitutional procedures. The absence and

1 ineffectiveness of state court post-conviction remedies overcomes four doctrines (1)
2 exhaustion of state remedies (2) the adequate and independent state ground or
3 procedural default rule barring habeas relief on claims not raised in state court (3)
4 the outright proscription against litigating 4th Amendment exclusionary rule claims
5 in hebeas [sic] proceeding and the imprecise limitations that the AEDPA places on
6 the litigation of other legal claims and (4) the presumption of correctness of state
7 court fact findings – in addition the harmless error doctrine/rule applies with less
8 force in federal habeas since the state court did not provide any - or possibly adequate
9 review of the harmless issue – thus a federal hearing of facts is required.” ECF No.
10 11 at 14.

11 Petitioner’s conclusory assertions are devoid of any facts showing that he is
12 entitled to federal habeas corpus relief. Therefore, for the reasons set forth above
13 and in the Order to Amend Petition, ECF No. 7, this habeas corpus action is subject
14 to dismissal.

15 //

16 **ACCORDINGLY, IT IS ORDERED:**

- 17 (1) This action is **DISMISSED with prejudice** pursuant to Rule 4, Rules
18 Governing Section 2254 Cases in the United States District Courts.
19 (2) All pending Motions and Applications are **DENIED as moot**.

(3) The Court certifies that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

The Clerk of Court shall enter this Order, enter judgment, provide copies to Petitioner, and **CLOSE** the file.

DATED May 21, 2024.



Thomas O Rice
THOMAS O. RICE
United States District Judge